

**IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>In re:</b>	:	<b>Case No. 10-33397</b>
	:	
<b>Jeffery A. Faulkner</b>	:	<b>Chapter 11</b>
	:	
<b>Debtor and Debtor in Possession</b>	:	<b>Judge Humphrey</b>

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**MOTION AND OBJECTION OF THE DEBTOR IN POSSESSION, PURSUANT TO 11 U.S.C. §§ 501, 502 AND 506 AND BANKRUPTCY RULE 3007 OF THE BANKRUPTCY RULES OF PROCEDURE TO DETERMINE WHETHER THE CLAIM OF FEDERAL NATIONAL MORTGAGE ASSOCIATION [CLAIM # 48] SHOULD BE ALLOWED, AND IF ALLOWED, FOR DETERMINATION THE SECURED AMOUNT OF THE CLAIM AS TO 736 S. RIVER STREET AND THE UNSECURED AMOUNT OF THE CLAIM AS OF THE PETITION DATE AND FOR OTHER RELIEF**

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**MOTION AND OBJECTION**

Jefferey A. Faulkner, debtor and debtor in possession, (“Debtor”), moves the Court, pursuant to 11 U.S.C. §§501, 502 and 506 and Bankruptcy Rule 3007 of the Bankruptcy Rules of Procedure to determine the (i) whether the claim of Federal National Mortgage Association. (“FNMA”), as set forth as Proof of Claim 48 in the Claims Register, should be allowed and, if allowed, (ii) determine what amount of the claim shall be allowed as a secured claim relating to the property at 736 S. River St., Franklin, Ohio and what amount of the claim shall be allowed as an unsecured claim, and if no secured claim is allowed, order the release of the mortgage from the land records of the county in which such Mortgage is recorded.

Respectfully submitted,

STATMAN, HARRIS & EYRICH LLC

/s/ Thomas R. Noland  
Thomas R. Noland (0018239)  
Michael Keefe (0086645)  
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Counsel for Debtor and Debtor in  
Possession

### **MEMORANDUM IN SUPPORT OF MOTION**

1. Claimant, FNMA, filed Proof of Claim, numbered 48 on 12-02-2010, claiming it was the owner of a Mortgage Note and Mortgage pertaining to a property commonly known as 736 S. River St., Franklin, Ohio ("Property"). Debtor has scheduled the Property to have a value of \$25,000.00. The holder of the claim as listed in the Claim is stated to be Federal National Mortgage Association with an address to serve further notice at Lender Business Process Services as servicer for the above named creditor, PO Box 4128, Beaverton, OR 97076-4128 and it claims \$70,002.83 was due on May 25, 2010 (the "Petition Date").
2. A mortgage note ("Note") was granted by Debtor to GreenPoint Mortgage Funding, Inc. ("GMFI") in the amount of \$72,000.00 on April 13, 2006. See Exhibit "A". Exhibit "A" also indicates the Note was endorsed in blank without recourse.
3. A mortgage was recorded against the Property in favor of GMFI in the Office of the Recorder of Warren County, Ohio on April 20, 2006 ("Mortgage"), see Exhibit "B" attached.
4. An assignment of the Mortgage, Exhibit "C", was executed on 9-28-2010, post-petition, purporting to have Mortgage Electronic Services, Inc., as a nominee for GMFI, assign

such Mortgage to FNMA and such assignment although no record indicates such assignment was recorded in the land records of the Warren County Ohio Recorder.

Debtor states on information and belief such assignment was not signed by an authorized representative of GMFI or was signed after GMFI ceased to exist, and that the assignment of mortgage was void or voidable for the same reasons.

5. The Claimant in its proof of claim, Exhibit "D", states the amount owed by Debtor is \$70,002.83, which may include charges not permitted by the Bankruptcy Code or charges not supported by any evidence in writing.
6. Debtor states attempts to reach Claimant to determine the validity of its claim have gone unanswered and that Debtor needs a determination whether the claim made by FNMA is allowable, and, if allowable, the amount of the secured claim determined based on the value of the Property serving as collateral for this claimed debt.

WHEREFORE the Debtor prays the Court (i) order FNMA to produce the original Mortgage Note with originals of any allonges or endorsements or other documentation that would prove possession, transfer and/or ownership of the Mortgage Note from April 13, 2006 to the present, (ii) allow discovery of history of the payment on the Mortgage Note and documentation supporting charges assessed Debtor from April 13, 2006 to the present, (iii) determine any rights and interests of Claimant in the Mortgage Note, (iv) determine if any claim made by Claimant should be allowed, (v) if claims of Claimant are allowed, determine the amount of the secured claim and the amount of the unsecured claim of Claimant, and if no secured claim is allowed, find the mortgage is void and order it released from the records of the Warren County Recorder and (vi) for any other relief which Debtor is entitled.

Respectfully submitted,

/s/ Thomas R. Noland  
Thomas R. Noland (0018239)  
Michael Keefe (0086645)  
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Counsel for Debtor and Debtor in  
Possession

NOTICE OF OPPORTUNITY FOR OBJECTION AND HEARING

Take Notice that Debtor in Possession has filed a Motion and Objection Of The Debtor In Possession, Pursuant To 11 U.S.C. §§ 501, 502 And 506 and Bankruptcy Rule 3007 of the Bankruptcy Rules of Procedure To Determine Whether the Claim of NMNA, [Claim # 48], Should Be Allowed, And If Allowed, For Determination The Secured Amount Of The Claim And The Unsecured Amount Of The Claim As Of The Petition Date And For Other Relief, if you do not want the Court to grant the relief requested, you should consult with an attorney to determine if you should oppose the Motion. The time to file an objection to the Motion shall occur within 30 days of the date this Motion was issued. Any objection must be filed with the Clerk of the U.S. Bankruptcy Court, 120 W. Third Street, Dayton, OH 45402 and a copy served upon Thomas R. Noland, Esq., Statman, Harris & Eyrich, LLC, Attorneys for Debtor in Possession, 900 Fifth Third Center, 1 S. Main St, Dayton, Oh 45402

DATE ISSUED: January 19, 2011

Certificate of Service

The undersigned herein certifies that a copy of this Motion and Objection of the Debtor in Possession, Pursuant To 11 U.S.C. §§ 501, 502 And 506 and Bankruptcy Rule 3007 of the Bankruptcy Rules of Procedure to Determine Whether the claim of FNMA [Claim # 48] Should Be Allowed, And If Allowed, For Determination The Secured Amount Of The Claim And The

Unsecured Amount Of The Claim As Of The Petition Date And For Other Relief was served through the bankruptcy electronic notification system or via ordinary U.S. mail on January 19, 2011 upon the parties set forth below.

Federal National Mortgage Association  
c/o Lender Business Process Services, Inc.  
PO Box 4128  
Beaverton, OR 97076-4128

Federal Nation Mortgage Association  
c/o IBM Lender Business Process Services, Inc.  
14523 Southwest Milliken Way, Suite 200  
Beaverton, OR 97005

Office of the United States Trustee  
Attn: Jeremy Shane Flannery, Esq.  
Suite 200, 170 N. High Street  
Columbus, OH 43215  
Jeremy.S.Flannery@usdoj.gov

/s/ Thomas R. Noland  
Thomas R. Noland